APPEAL NO. 031477
FILED JULY 28, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 13, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and the claimant did not have disability within the meaning of the 1989 Act because he did not sustain a compensable injury. In his appeal, the claimant argues that the hearing officer's decision is against the great weight of the evidence. In addition, the claimant contends that the hearing officer erred in admitting several of the respondent's (carrier) exhibits. In its response, the carrier urges affirmance.

DECISION

Affirmed.

Initially, we will consider the claimant's assertion that the hearing officer erred in admitting Carrier's Exhibit Nos. 5, 6, 7, and 9. The benefit review conference was held in this case on March 13, 2003. Thus, the 15-day deadline for exchanging exhibits established in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) was March 28, 2003. The carrier's attorney exchanged Exhibit Nos. 5, 6, 7 and 9 on March 28, 2003, with an attorney that had been a named partner in the firm that was representing the claimant, but who had left the firm and was at a different address. A supplemental exchange was sent to the attorney who represented the claimant at the hearing on April 22, 2003. The hearing officer stated on the record, "I can understand why it would have gone to [attorney 1]" based upon the fact that the attorney's name was listed on the letterhead for the firm. Thus, she determined that there was good cause for the late exchange. In this instance, any error in the admission of Carrier's Exhibit Nos. 5, 6, 7, and 9 does not rise to the level of reversible error. Initially, we note that some of the evidence in those exhibits is cumulative of other evidence properly before the hearing officer. In addition, we note that it has been stated that reversible error is not ordinarily shown in connection with evidentiary rulings unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). It is apparent from reviewing the record that the decision in this case hinged on the credibility of the claimant. That is, the hearing officer's decision was premised upon the fact that she did not believe the claimant's testimony. Thus, the hearing officer's admission of the challenged exhibits, if error, was not reversible error because any consideration of those exhibits "was not reasonably calculated to cause and probably did not cause the rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The claimant had the burden to prove that he was injured in the course and scope of employment. Conflicting evidence was presented at the hearing. The 1989

Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). Our review of the record reveals that the hearing officer's injury determination is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS**
**350 NORTH ST. PAUL, SUITE 2900**
**DALLAS, TEXAS 75201**.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Robert W. Potts
Appeals Judge